**Shen-Valley Meat Packers, Inc.** *and* **Teamsters Local Union No. 29, Petitioner.** Case 5-RC-11731

May 14, 1982

## DECISION ON REVIEW AND ORDER

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

On March 2, 1982, the Acting Regional Director for Region 5 issued a Decision and Direction of Election in the above-entitled proceeding in which he directed an election in the Petitioner's requested unit of production and maintenance employees at the Employer's Timberville, Virginia, location, finding that the existing contract between the Employer and Employee Committee, Independent, herein called the Intervenor, was one of unreasonable duration inoperative as a bar as the petition was filed after the third anniversary date. Thereafter, in accordance with the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Employer filed a timely request for review of the Regional Director's decision on the grounds that he departed from precedent. The Petitioner filed a timely opposition to the Employer's request.

By telegraphic order dated March 30, 1982, the National Labor Relations Board granted the request for review and stayed the election pending decision on review. Thereafter, the Employer filed a brief on review.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the entire record in this case with respect to the issues under review, including the Employer's brief on review, and makes the following findings:

The instant petition was filed January 28, 1982. The Employer and the Intervenor asserted their collective-bargaining agreement as a bar to the petition. The Employer and the Intervenor executed an agreement on January 5, 1979, effective from December 31, 1978, through December 31, 1983. The contract also provided that "at the expiration of two (2) years (January 3, 1981), the wage rate and other conditions of this agreement may be reopened for negotiations"; it also provided for limited wage reopeners at 6-month intervals: July 1, 1979, December 30, 1979, and June 29, 1980.

Several supplemental agreements were executed by the parties: the first is undated, but was apparently executed on or about July 1, 1979; the second is dated December 21, 1979, and the third is dated August 1, 1980. Each of these provided for wage increases, some of which were in exchange for deletion of a rest period, all as expressly contemplated by the agreement. Also appended to the agreement is a document dated December 28, 1979, and signed only by a representative of the Employer, providing for an additional wage increase.

On February 13, 1981, the parties executed a "Fifth Amendment to Agreement dated January 5, 1979, between Shen-Valley Meat Packers, Incorporated, and the Employee's [sic] Committee." This amendment contains various provisions organized according to sections of the 1979 agreement including recognition, working hours and conditions, holidays, disability pay, supervisory employees, and vacations. It provides that, "This amendment becomes effective January 4, 1981, and is in effect through the remainder of the agreement . . . ." except that it permitted renegotiation of hourly wage rates only, after June 27, 1981. On July 2, 1981, the parties executed a sixth amendment providing for a wage increase and pledging the parties to "strive to increase production" by certain amounts in each department. This amendment provided that it would be effective June 28, 1981, and would "remain in effect through January 2, 1982, at which time it can be reopened for wages only." In January 1982, the parties met to renegotiate wages but did not agree and the contract was not amended at that time, and it has not been since.

The Regional Director found that the petition filed January 28, 1982, was timely and not barred by the collective-bargaining agreement then in force. Under *General Cable Corporation*, 139 NLRB 1123, 1125 (1962), an agreement of more than 3 years' duration is treated for contract-bar purposes as expiring on its third anniversary date; here the agreement was for 5 years, and the petition was filed after the third anniversary date. Thus, the petition would have been timely in the absence of a new agreement between the Intervenor and the Employer, executed prior to the filing of the petition, reaffirming or extending the term of their original agreement. Contrary to the Regional Director, we find that the parties by their February 1981 amendment (the fifth amendment) reaffirmed their original agreement, with modifications, for the remainder of its term, and that that amendment bars the instant petition.[1]

[1] The Employer also argues, in the alternative, that the original contract actually expired on January 3, 1981, and that the February 1981 agreement was a new contract. Such a reading is, however, precluded by the plain language of the original contract, which contains an expiration date of December 31, 1983. Any evidence of the parties' "understanding" of the original contract's expiration date, which the Employer would have us consider, is irrelevant to the determination of the contract's dura-

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In *Southwestern Portland Cement Company*, 126 NLRB 931, 933 (1960), the Board held that parties to a long-term collective-bargaining agreement could reactivate the contract bar after the initial term of "reasonable duration" had passed, by executing a new contract, or "a written amendment which expressly reaffirms the long-term agreement and indicates a clear intent on the part of the contracting parties to be bound for a specific period," and that in such a case, the "amendment shall be effective as a contract bar for as much of its term as does not exceed 2 years."[2] The Board further noted that "[a]ny . . . amendment executed prior to the 60-day [insulated] period at the end of the first 2 years of a long-term contract, however, is subject to the premature extension doctrine." *Id.*[3]

Here, the Regional Director concluded that the February 1981 amendment was not a bar under *Southwestern Portland Cement* because it was executed before the third anniversary date but was not a premature extension, as it did not alter the contract expiration date. However, the term "premature extension" was used in *Southwestern Portland Cement* to mean any agreement executed during the period of reasonable duration (then 2 years) extending the contract beyond that period.[4] Therefore we would find the February 1981 amendment to be, in effect, a premature extension of the 1979 agreement and, in the circumstances, to govern the timeliness of the petition,[5] if it "expressly reaffirms the long-term agreement and indicates a clear intent on the part of the contracting parties to be bound for a specific period . . . ." *Southwestern Portland Cement Company*, 126 NLRB at 933.

As indicated, the amendment is for a fixed term, effective January 4, 1981, "through the remainder of the agreement," that is, until December 31, 1983. We also find, contrary to the Regional Director, that the agreement "expressly reaffirms" the long-term agreement.[6] The parties' intent, in the February 1981 amendment, to reaffirm their original agreement is clear. Their intent is evidenced, first, by their reference to that agreement in the February 13 amendment. The title of the amendment refers to the original agreement, the content is phrased in terms of amendments to the various sections of the original agreement, and the duration clause provides that the amendment is to be effective "through the remainder of the agreement." Furthermore, the amendment is made effective retroactively to January 4, thus acknowledging the provision in the original agreement for general reopening on January 3, 1981.

Most importantly, the parties' intent to reaffirm their agreement in the February 1981 amendment can be inferred from the general scope of the January 3, 1981, reopening provided for in the original agreement, which allowed the parties to renegotiate "the wage rate and other conditions of this agreement." Indeed the parties did so; the February amendment covers a broad range of significant terms and conditions of employment. The other amendments, in contrast, were narrowly limited in scope by the terms of the original contract; they were essentially wage reopeners.[7]

Our interpretation comports with the dual purpose of the 3-year reasonable duration rule: to promote stable collective-bargaining relationships while preserving the right of employees to change their bargaining representative. See *Pacific Coast, supra* at 994. The Board's rule achieves a balance between these competing policies in two ways. First, the "open period" for filing petitions, 60 to 90 days before the third anniversary date of long-term contract, ensures to employees the opportunity to change representatives regardless of the actions of the contracting parties.[8] Second, the em-

tion for contract-bar purposes. Indeed, if such evidence were necessary to determine the expiration date, the contract would be ineffective as a bar. See *Pacific Coast Association of Paper and Pulp Manufacturers*, 121 NLRB 990, 994 (1958).

[2] At the time *Southwestern Portland Cement* was decided the period of reasonable duration of contracts for bar purposes was held by the Board to be 2 years; this period was changed to 3 years in *General Cable Corp., supra*.

[3] That doctrine holds that where parties renew their contract before the 60-day insulated period, a petition will still be timely if filed in the "open" period relative to the original expiration date. *Deluxe Metal Furniture*, 121 NLRB 995, 1001 (1958).

[4] While the Board defined a "premature extension" in *Deluxe Metal Furniture*, 121 NLRB at 1001, as a new contract or amendment executed during the term of an existing contract "which contains a later terminal date than that of the existing contract," that definition did not refer specifically to long-term contracts. Indeed, where contracting parties assert as a bar an amendment to their long-term contract executed during the period of reasonable duration, it would serve no useful purpose to distinguish between amendments that altered the expiration date of the original contract and those that did not.

[5] The premature extension doctrine does not operate to remove the February 1981 agreement as a bar here, as the petition was not filed in the open period relative to the third anniversary date of the long-term contract.

[6] See *The Santa Fe Trail Transportation Company*, 139 NLRB 1513, 1514 (1962); *Union Carbide Corporation*, 190 NLRB 191, 192 (1971).

[7] This was the sort of amendment found not to alter the duration of the long-term agreement in *Penn-Keystone Realty Corporation*, 191 NLRB 800 (1971), relied on by the Regional Director; there, the petition was timely filed within the open period before the third anniversary date of the long-term agreement.

The Regional Director and the Petitioner cite language in *Deluxe Metal Furniture*, 121 NLRB at 1003, indicating that a midterm modification, regardless of its scope, will not remove a contract as a bar. That principle is inapplicable here. While midterm modification will not remove a bar where the contract would otherwise be a bar, modification midterm of a long-term contract may, if it meets the requirements set forth in *Southwestern Portland Cement*, as here, extend the operation of the contract as a bar beyond the third anniversary date. In determining whether or not a midterm modification reaffirms a long-term contract for bar purposes, the scope of the modification clause in the long-term contract is a relevant consideration.

[8] The petition herein, filed January 28, 1982, was beyond the "open period" of the initial 3-year period.

ployees have a further opportunity to exercise their choice after the 3-year period has passed, *if* the contracting parties do not renew their agreement. Thus the statutory policy favoring stability in collective bargaining is stronger, relative to the competing policy of employee free choice, where the bargaining relationship is active and the collective-bargaining agreement more nearly reflects contemporaneous conditions as the contracting parties perceive them—that is, when the bargaining relationship is furthering the Section 7 rights of the represented employees to effective collective bargaining with respect to the terms and conditions of their employment. Here then, where the contracting parties provided in their long-term agreement an opportunity to change any term of that agreement, and then availed themselves of the occasion to renegotiate, the resulting amendment reaffirms their long-term agreement to the extent that it does not change it, and properly serves as a bar to rival petitions.

As the February 1981 amendment reaffirmed the parties' 1979 long-term agreement, we find that it bars any petition filed after the third anniversary of the 1979 agreement until December 31, 1983—subject to the open period from 60 to 90 days prior to its expiration. The petition herein is therefore barred by the contract amendment, and, accordingly, we shall dismiss it.

## ORDER

It is hereby ordered that the petition herein be, and it hereby is, dismissed.